

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ANDREW ALLEN COOK,

Petitioner

vs.

STEPHEN UPTON, Warden,

Respondent

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO.: 5:09-CV-25 (CAR)

ORDER

Petitioner requests this Court to issue a Certificate of Appealability (“COA”) for several claims contained in his Petition for Writ of Habeas Corpus by a Person in State Custody (“federal habeas petition”).

First, Petitioner seeks a COA as to the claim that his trial counsel was ineffective at the penalty phase of his capital trial. Specifically, Petitioner maintains that his trial counsel failed to conduct an adequate investigation and presentation of mitigation evidence during the penalty phase of his trial and that trial counsel failed to adequately prepare John Cook, Petitioner’s father, to testify during the penalty phase of the trial. These issues are contained in Claim One of the federal habeas petition.

Second, Petitioner requests a COA as to Claim Seven in his federal habeas petition. In Claim Seven, Petitioner maintains that the trial court improperly admitted inculpatory statements Petitioner made to his father, Federal Bureau of Investigations Special Agent John Cook, under *Miranda v. Arizona*, 384 U.S. 436 (1966).

The Court has given substantial consideration to the issues contained in Claim One and Claim Seven and reaffirms without reservation all of its previous Orders. However, the Court does conclude that jurists of reason could disagree with the Court's resolution of these claims and that these particular issues deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing 28 U.S.C. § 2253); *Anderson v. Secretary for the Dep't of Corr.*, 462 F.3d 1319 (11th Cir. 2006). Therefore, the Court **GRANTS** Petitioner's request for a COA on the issues described above, which are contained in Claims One and Seven of the federal habeas petition.

Petitioner also requests a COA as to his claim that "the trial court improperly excluded evidence regarding the circumstances surrounding the voluntariness of [Petitioner's] statements to his father under *Crane v. Kentucky*, 476 U.S. 683 (1986), resulting in penalty phase prejudice." (Pet'r Application for COA, p. 1); (Part "a" of Claim Eight in his federal habeas petition). In relation to this claim, Petitioner has not shown that "[j]urists of reason would . . . debate the correctness of the district court's ruling[,]" or that the issue deserves encouragement to proceed further. *Anderson*, 462 F.3d at 1325. Therefore, Petitioner's request for a COA on this claim is **DENIED**.

SO ORDERED, this 26th day of August, 2010.

S/ C. Ashley Royal
C. ASHLEY ROYAL, JUDGE
UNITED STATES DISTRICT COURT

lnb